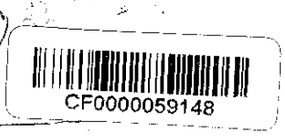
XII-283(Jail)
C.J. & R.-2000 6-88

CA 845/92 CrA 8 192 (03)

APPEAL OF PRISONER (02)



No. 5042 Name बरसन

Father's name पचकौड़े

Residence जिला रायपुर Age 48 वर्ष

Sentenced आजीवनकारावास on 22-4-92

Under section 302 भा.द.वि by अति. जिला एवं सत्र न्यायालय अलोक अग्रवाल

it is explined to the prisoner that if he states or wishes to be represented by legal practitioner the Appeliate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement

2 Date of which copy received साथ मे लाया

3 Date on which Appeal sent 22-4-92

4 whether the prisoner wishes to be represented or not – Yes / No.

No. 5042 Name बरसन उर्फ पचकौड़े

Continued in केन्द्रीय Jail रायपुर

No. 221/N.C. Dated 7-5- 198 92

Forward to the CHIEF JUDICIAL MAGISTRATE अलोक अग्रवाल

to gather which a copy of order passed in the case for favour of transmission to the proper Appeliate Court.

Superintendent अधीक्षक, Jail केन्द्रीय जेल, रायपुर. (म.प्र.)

Date of receipt in C. J. M's office 9-6-92

Date of receipt record to accompany 24.6.92

Memo of Appeal of the Appeliate court

No 221 Dated 198 24/6/92

Forwarded to the जिला एवं सत्र न्या. रायपुर

मुख्य न्यायिक दंडाधिकारी, C. J. Magistrate रायपुर. (म.प्र.)

Date of receipt in Appeliate Court

(P. T. O.)

(31)

HIGH COURT OF CHHATTISGARH: BILASPUR

Criminal Appeal No. 845/1992

Barsan

Vs.
State of Chhattisgarh

&

Criminal Appeal No.846/1992

Laxminath

Vs

State of Chhattisgarh.

CORAM: **Hon'ble Shri Fakhruddin, J &**
Hon'ble Shri Vijay Kumar Shrivastava, J.

Mrs. Kiran Jain, Counsel for the appellant in Criminal Appeal No.845/92.

Mr. Y.C. Sharma with Mr. Vivek Rathore and Mr. Hemant Gupta, Counsel for the appellant in Criminal Appeal No.846/92.

Mr. U.N.S. Deo, Additional Public Prosecutor with Shri Akhil Mishra, Counsel for the respondent/State.

JUDGMENT

(Delivered on 22 /09/2005)

Per Fakhruddin, J.

Heard.

This judgment shall dispose of the Criminal Appeal No. 845/1992 (Barsan –v- State of Chhattisgarh) and Criminal Appeal No. 846/1992 (Laxminath –v- State of Chhattisgarh).

(32)

2) These two appeals are directed against the judgment of conviction and order of sentence dated 22/04/1992 passed by the Additional Sessions Judge, Baloda Bazar in Sessions Trial No. 169/91 by which appellant Barsan has been held guilty for committing offence punishable under Section 302 of the I.P.C. and sentenced to undergo imprisonment for life and appellant Laxminath has also been convicted under Section 302 of the I.P.C. and sentenced to imprisonment for life and also under Section 323 of the I.P.C. and sentenced to undergo R.I. for one year. Both the sentences are directed to run concurrently.

3) Briefly stated the prosecution story is that Ghanshyam Prasad Verma was a teacher in village Sandi. Laxminath and Barsan both were working as agricultural labourers. On 02/10/1990, Laxminath and Barsan had gone to the shop of Ramprasad Verma where they purchased cloths worth Rs.126.50. Ghanshyam Prasad Verma had accompanied them and stood as guarantor to pay in case they fail to pay within stipulated time. The prosecution story is that the said amount was not paid, and, therefore, the shopkeeper Ramprasad Verma started demanding the amount from Ghanshyam Prasad. It is alleged that on 11/11/1990 both the accused Laxminath and Barsan came to the house of Ghanshyam Prasad Verma where hot talks took place as a result of that Laxminath refused to remain in service of Ghanshyam Prasad any more. On 14/1/1990 at about 7.00 p.m. Ghanshyam Prasad along with his brother Narayan (PW/8) went to the house of accused persons and demanded the amount as the same was to be paid. There quarrel took place between Ghanshyam Prasad Verma and both the accused. It is alleged that

(33)

the accused Laxminath assaulted Ghanshyam Prasad Verma with Tangia and Barsan with Lathi. Narayan (PW/8) tried to escape but he was beaten by Laxminath as a result thereof he sustained injuries. This information was received by Badri Prasad (PW/10) who is the son of Narayan (PW/8) and he rushed to the spot and found that Laxminath standing outside the house holding Tangia. As soon as Badri Prasad rushed to the spot, he was abused, threatened and was asked to go from there otherwise, he would be beaten. Badri Prasad went to Police Station along with Santosh and lodged the Fist Information Report in the Police Station on the same day at 8.00 p.m. (Ex/P/26) and Police recorded the merg (Ex.P/27). Lochan (PW/11) Investigating Officer started investigation. On 14/11/1990, he came to the spot and sent Narayan (PW/8) for medical treatment to Primary Health Centre, Palaria where he was examined by Doctor Sita Ram Banjare (PW/1). Medical report is (Ex.P/1). On 15/11/1990 he prepared Panchnama (Ex/P/10) and site map (Ex.P/28). The dead body was sent to Government Hospital, Baloda Bazar for autopsy. The autopsy was conducted by Dr. H.N. Naik, (PW/4). His report is Ex.P/4. He found injuries. He opined that cause of death was due to excessive bleeding and shock. On 15/11/1990 as per Ex/P.13, the seized articles -Gamcha, Tobacco box, spectacles, blood stained soil and plain soil of deceased were sent for examination. In the intervening night of 15/16-11-1990 Barsan was arrested from the house of his sister- Dullorinbai (DW/2) in the village Garakusmi and Laxminath was arrested in the village Gharghoda. During investigation tangia, lathi, sickle, clothes, shirt, baniyan, underwear and Gamcha have been seized according to seizure memo. Articles seized from Laxminath and Barsan were sent to

(34).

FSL (PW/13). Ex.P/29 is the memorandum of articles and Ex.P/31 is the report of FSL. Blood stains were found in the report of FSL and it was sent to Serologist, Calcutta. His report is Ex.P/32. On his examination, human blood was found. After investigation, charge-sheet was filed.

4. Learned trial Court framed charges under Section 302 alternatively Section 302 read with Section 34 of the I.P.C., for causing death of Ghanshyam Prasad Verma and causing injury to Narayan under Section 323 the I.P.C. Charge sheet was read over and explained to them who abjured their guilt and claimed themselves innocent. The defence of Barsan is that he was not present on the spot on the fateful day and he was on the way to the house of his sister Dillorin Bai (DW/2) in village Garakusmi. In support of his defence, he examined DW/1 and DW/2. The defence of Laxminath is that it was Ghanshyam Prasad Verma who came in the aggressive mood, knocked the door and thereafter found the dead body and was guarding the dead body.

5) The prosecution has examined 11 witnesses. P.W.1 Dr. Sita Ram Banjare who examined P.W.8 injured witness and gave report. P.W.2 Laxminath Sahu, Patwari prepared map, P.W.3 Abhinath, Head Constable, P.W.4 Dr. H.N. Naik, who conducted the autopsy and opined that the injuries were caused by tangia. P.W.5 Korbahar who conducted the inquest, P.W. 6 Ramkumar, P.W.7 Ramprasad Verma, cloth merchant from whom cloths were purchased, P.W.8 Narayan, injured eye-witness, P.W.9 Bharat Ram, seizure witness, P.W.10 Badri Prasad, s/o Narayan, P.W.8, who had reached the spot immediately and P.W.11 Lochan, Investigating Officer.

(35)

6) Learned trial Judge by judgment impugned recorded the finding of guilt and convicted and sentenced as stated above, hence this appeal.

7) Learned counsel for the appellant contended that the conviction and sentence are not sustainable whereas learned counsel appearing for the State supported the judgment and findings recorded by the Court below.

8) Learned counsel for the appellant vehemently contended that the evidence of Narayan P.W. 8 is not reliable and the learned trial Court has wrongly relied on the same. It is appropriate to refer his evidence in detail. Narayan PW-8 is injured witness. In para 2 he has stated that on 14/01/1990 he had gone to Ghanshyam Prasad's house along with his brother-in-law Kejuram. Both of them entered into the house and thereafter about 15 minutes accused Laxminath and his father barsan came there to beat his brother Ghanshya Prasad. Accused Laxminath and Barsan entered into the house of Ghanshyam Prasad Verma, caught hold of him and threw him on the ground. He pacified. He further stated that Ghanshyam Prasad asked Laxminath and Barsan to return the amount. He stated that the quarrel took place because of non-payment of amount regarding clothes which was purchased by accused Laxminath and his brother stood as guarantor and the shopkeeper was demanding that money. In paragraph 5 of the statement, the witness P.W. 8 stated that on the date of incident at about 7.00 P.M., his brother told him that Laxminath and Barsan had promised him to return the amount and asked him to accompany him to get the amount. Then he and his brother Ghanshyam went near the doors of the house of

(36)

Laxminath and Barsan, accused Laxminath and Barsan were in the house. His brother called Laxminath and Barsan. They came out and stood near the doors. His brother Ghanshyam asked him to give the amount as the shopkeeper was demanding the amount. The accused persons saying that they don't have money, threw his brother on the ground and started committing *Marpeet.* Accused Laxminath had a Lathi and accused Barsan had a Tangia. P.W. 8 Narayan further stated that he shouted 'Bachao Bachao. On this, accused Laxminath also assaulted him (Narayan) as a result of which he sustained head injuries and his bone was fractured. In para 6 of the statement, he stated that accused Laxminath and Barsan assaulted his brother by Tangia and *Lathi,* as a result of which, his brother died on spot. In cross-examination, he denied the suggestion that because deceased Ghanshyam Prasad was his brother, he was giving false evidence. He has been cross-examined at length, but there is nothing to discard the testimony. He stated that it is not correct to say that on Sunday, there was no quarrel in the house of his brother Ghanshyam Prasad Verma with accused persons. It was also suggested that before going to the house of the accused, they had consumed the liquor but he denied. It was also denied that there was enmity between the brothers. His statement is corroborated by P.W. 10 Badri Prasad. He is the son of Narayan (PW/8). He stated that his brother Surendra informed him that a quarrel was going on with his father Narayan and his uncle Ghanshyam Prasad Verma. On hearing this, he reached the spot i.e. the Gali in front of the house of accused persons and saw that his uncle was lying dead on the road and there were injuries and bleeding on his body and accused Laxminath was standing on the door with a Tangia.

(37)

9) Learned counsel for the State relying upon a decision of the Apex Court rendered in the case of ***Prithvi (minor) Vs. Mamraj and others, reported in AIR 2004 SC 2729,*** contended that injured witness though he is related to deceased, can be relied for convicting the accused persons. On the contrary, learned counsel for the appellants submit that the witness although injured, is in relation of the brother of the deceased, therefore, being interested with the deceased, should not be believed.

10) Badri Prasad (PW/10) is the person who is the son of Narayan and rushed to the spot and found that accused Laxminath was standing outside the house holding Tangia and by that time his uncle Ghanshyam Prasad Verma was beaten with tangia and lathi. He also found Narayan lying unconscious. Narayan had injury on his head and back. His grand mother was there. Badri Prasad went to Police Station along with Santosh and lodged the first information report. There is nothing in the cross-examination.

11) We have gone through the record very minutely. Learned trial Judge has also considered and discussed the evidence in great detail in paras 20, 21, 22 and 26. Learned trial Court in its judgment of conviction and sentence has categorically mentioned that the incident took place due to some money dispute. When the deceased along with his brother Narayan (PW.8) went to the house of accused persons, demanding money, refusal to pay the same by the appellants led to scuffle and in the course of the incident, accused persons brought lathi and tangia and inflicted multiple injuries to the deceased. The learned trial Court has also categorically mentioned in its judgment that the

(38)

statement of brother of the deceased recorded during the trial cannot be said to be unreliable.

12) Doctor H.N. Naik, (PW/4) who conducted post mortem on the body of the deceased, has deposed injuries as follows.

> "1) The facial contour distorted, bleeding from both ears present.
> 2) Incised wound 5 cm x 2 x 2 ½ cm over right mandibular border, obliquely placed.
>
> 3) Incised would 5 x 2 x 3 cm just below chin, mandible bone cut, transversely placed.
>
> 4) Bruise 8 x 3 cm transversely placed, anterior aspect of neck. Bluish-Red coloured.
>
> 5) Bruise 12 x 2 cm, 3 in No. Parallel to each other obliquely placed over right shoulder anteriorly, extending from axillary fossa to supra clavicular toss right, bluish –red coloured.
>
> 6) Bruise 6 x 3 cm left side of chest, supra mammary region. Bluish red coloured.
>
> 7) Bruise 6 x 2 cm over right side of chest below mammary region obliquely placed.
>
> 8) Bruise 20 x 3 cm, vertically placed, extending from left parasternal area to below umblicus Bluish red coloured.
>
> 9) Bruise 10 x 3 cm, Bluish-Red over left thigh antero lateral aspect, upper part, vertical placed.
>
> 10) Bruise 8 x 3 cms over medical aspect of right thigh in middle, obliquely placed.
>
> Injuries are ante mortem in nature".

(39)

13) Doctor in his post mortem report, has opined that the cause of death is due to excessive hemorrhage and shock resulting from sustained injuries.

14) Having considered the facts and circumstances of the case and material on record, we are of the opinion that there is nothing substantial on record to show or prove that the finding recorded by the trial Court is perverse or erroneous or calls for any intervention. The trial Court has rightly arrived at the finding. There is no infirmity in the judgment of conviction and order of sentence passed by the trial Court.

15) In the result, the judgment, conviction and order of sentence passed by the trial Court are maintained and the appeals are dismissed.

16) Accused Laxminath remained in custody and has undergone the sentence. Accused Barasan is on bail. Accused Barsan to surrender before the trial court concerned on or before 2/12/2005 to undergo the remaining sentence.

17) Copy of the judgment be placed in both the appeals i.e., Criminal Appeals No.845/92 and 846/92.

Sd/- **Fakhruddin** **Judge**	**Sd/-** **V.K. Shrivastava** **Judge**
22/09/2005	22/09/2005

Raju/Pathak